

Remarks

Claims 81-90, 104-105, 111 and 112 are pending in the Application.

Claims 81-87, 104-105 and 111 are rejected.

Claim 112 is allowed.

I. REJECTIONS UNDER OBVIOUSNESS-TYPE DOUBLE PATENTING

Examiner has rejected Claims 81-87, 104-105 and 111 under the judicially created doctrine of obviousness-type double patenting as being unpatentable over Claims 22-26, 30 and 31 of U.S. Patent No. 6,645,455 "Chemical derivatization of single-wall carbon nanotubes to facilitate solvation thereof; and use of derivatized nanotubes to form catalyst-containing seed materials for use in making carbon fibers" ("the '455 Patent"). Office Action, at 2. Examiner contends that "although the conflicting claims are not identical, they are not patentably distinct from each other because the million tubes are disclosed in column 5 of the patent and are thus expected to be present." *Id.*

Applicant respectfully traverses these rejections, however, to facilitate prosecution of the Application, Applicant hereby responds with the enclosed Terminal Disclaimer to moot these rejections. Applicant notes that, by filing this terminal disclaimer, it is not admitting the obviousness of the later filed claimed invention claimed in the '455 Patent in light of the earlier filed disclosure of the present Application. *Quad Environmental Tech. v. Union Sanitary Dist.*, 946 F.2d 870, 874, 20 U.S.P.Q.2d 1392, 1394 (Fed. Cir. 1991). Rather, "the filing of a terminal disclaimer simply serves the statutory function of removing the rejection of double patenting, and raises neither presumption nor estoppel on the merits of the rejection." *Id.*, 946 F.2d at 874, 20 U.S.P.Q.2d at 1394-95. And, it is with that understanding Applicant has filed the terminal disclaimer.

Therefore, in view of the foregoing, Applicant respectfully requests that the Examiner withdraw his rejection of Claims 81-87, 104-105 and 111 under the judicially created doctrine of obviousness-type double patenting as being unpatentable over Claims 22-26, 30 and 31 of the '455 Patent.

II. ALLOWED CLAIM

Examiner has allowed Claim 112.

III. CONCLUSION

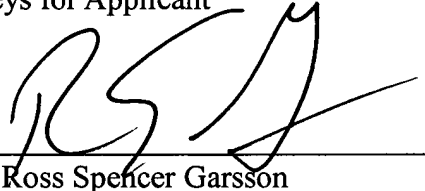
As a result of the foregoing, it is asserted by Applicant that the Claims in the Application are now in a condition for allowance, and respectfully requests allowance of such Claims.

Applicant respectfully requests that the Examiner call Applicant's attorney at the below listed number if the Examiner believes that such a discussion would be helpful in resolving any remaining problems.

Respectfully submitted,

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